**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C., 20554**

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| In the Matter of<br><br>Amendment of Parts 2, 25, and 87 of the Commission's Rules to Implement Decisions from World Radiocommunication Conferences Concerning Frequency Bands Between 28 MHz and 36 GHz and to Otherwise Update the Rules in this Frequency Range<br><br>Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum For Government and Non-Government Use in the Radionavigation-Satellite Service | ET Docket No. 02-305<br>RM-10331 |

To: The Commission

**REPLY COMMENTS OF**
**THE BOEING COMPANY**

The Boeing Company ("Boeing"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415 (2002), respectfully submits these reply comments addressing certain comments that were filed in response to the above-captioned Notice of Proposed Rule Making ("*NPRM*").

## I. INTRODUCTION

Boeing filed comments in the initial phase of this proceeding focusing on a number of important issues pending before the Commission, including the loss of the secondary aeronautical telemetry allocations in the 1525-1535 MHz and the 2320-2345 MHz bands and the proposed adoption of (1) a domestic allocation for the Radionavigation Satellite Service ("RNSS") in the 1164-1215 MHz band, (2) a generic

L-band allocation for the Mobile-Satellite Service (”MSS”) and (3) a secondary allocation in the 14.0-14.5 GHz band for MSS (Earth-to-space) except AMSS.

Boeing’s position on each of these issues has not altered during the course of this proceeding. Boeing files these limited reply comments, however, solely to respond to the comments of AirTV Limited regarding the elimination of the unused allocation for the broadcasting-satellite service (“BSS”) in the 2500-2690 MHz band (“S-band”).[1]

## II. AIRTV IS INCORRECT IN ARGUING THAT ELIMINATING THE S-BAND BSS ALLOCATION WOULD HARM COMPETITION FOR BROADBAND SATELLITE SERVICES TO AIRCRAFT

The Commission proposes in its NPRM to delete the allocations for BSS and the fixed-satellite service (“FSS”) in the S-band because they are incompatible with Instructional Television Fixed Service (“ITFS”) and Multipoint Distribution Service (“MDS”) operations in the band throughout the United States.[2] AirTV opposes this measure in an effort to preserve its proposal to launch and operate geostationary (“GSO”) satellites that would reportedly use the S-band to provide broadband services to aircraft.[3]

Boeing takes no position on what, if any, harmful interference could result to incumbent fixed services in the United States if BSS was permitted in the S-band. Instead, Boeing seeks only to correct the record regarding AirTV’s claim that eliminating the S-band BSS allocation would harm competition for broadband services to aircraft in the United States.

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[1] *See Comments of AirTV Limited*, ET Docket No. 02-305 (February 10, 2003).

[2] *See NPRM* ¶ 52.

[3] *See AirTV Comments* at 3-10.

Boeing holds Commission authorizations for its Connexion by Boeing service, which uses a fleet of mobile satellite earth stations operating in the aeronautical mobile-satellite service ("AMSS") in order to provide broadband data and entertainment services to passengers and crew onboard aircraft. Boeing also holds similar authorizations from other countries. Connexion by Boeing is using existing Ku-band FSS networks in order to make its services available globally.[4] Through the use of existing satellite networks, Boeing provides its Connexion service on a spectrally efficient basis and at affordable prices for airlines and consumers.

AirTV argues that the Commission's elimination of the BSS allocation in the S-band would give "one U.S. company . . . a *de facto* monopoly within the United States" in the provision of broadband satellite services to aircraft.[5] In making this statement, AirTV appears to be referring to Connexion by Boeing (although, as AirTV acknowledges, other U.S. companies have proposed to provide broadband satellite services to aircraft in the United States).[6]

AirTV is incorrect in making this argument. As mentioned above, other U.S. and non-U.S. companies, including several satellite network licensees, have proposed to

[4] In this regard, Boeing does not understand AirTV's claim that "[o]nly AirTV will have a global network capable of providing data and entertainment services to commercial aircraft anywhere and anytime." *Id.* at 10. Boeing's Connexion service uses multiple GSO satellites that were selected for their comprehensive coverage of domestic and international airspace throughout the world. Boeing's network of leased FSS transponders provides as good, or better global coverage than AirTV's proposed network of four GSO satellites.

[5] *Id.*

[6] *Id.* at 9 (referring to Seattle-based Tenzing Communications).

provide broadband satellite services to aircraft in the United States. None of these proposals depend on a BSS allocation in the S-band to succeed.

Furthermore, Boeing's technology for bringing broadband satellite services to aircraft creates, rather than diminishes, new opportunities for competition. Boeing's AMSS earth stations are designed to operate within the two degree spacing environment for U.S.-authorized Ku-band FSS networks, as well as within the spacing requirements found in other regions. As a result, numerous other AMSS networks could operate in competition with Boeing using the large inventory of Ku-band FSS satellites and transponders that are available.

AirTV also argues that the removal of the S-band BSS allocation in the United States would constitute a protectionist measure that would be counter to the WTO agreement on Basic Telecommunications Services.[7] AirTV acknowledges, however, the WTO agreement expressly does not apply to satellite transmission of direct-to-home and direct broadcast satellite services in the United States.[8]

Even if the WTO agreement did apply to AirTV's service, the United States reserved the right to limit the issuance of new satellite authorizations when faced with insufficient spectrum availability.[9] Although Boeing expresses no opinion on the interference issues, it notes that the Commission has observed that the S-band is "heavily used" by ITFS and MDS and, as a result, any BSS operations in the band "could affect

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[7] *See id.* at 10.

[8] *See id.* at 10 n.12.

[9] *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report & Order, FCC 97-399**,** ¶ 149 (Nov. 26, 1997) ("*DISCO II Order*").

the reliability" of these consumer services.[10] Accordingly, at least from the standpoint of competition analysis, the Commission's decision to delete the S-band BSS allocation is justified by the public interest and is fully consistent with international requirements.

## III. CONCLUSION

For the reasons stated, Boeing urges the Commission to adopt each of the changes in its domestic spectrum allocation table recommended in Boeing's comments and reply comments in this proceeding and to reject AirTV's claim that eliminating the S-band BSS allocation will harm competition in the delivery of broadband services to aircraft.

Respectfully submitted,

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[10] *NPRM* ¶ 52.